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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ESAU TORRES, and EULER TORRES, as
individuals,

Plaintiffs,

v.

CITY OF TULARE, a municipality, CITY OF
TULARE CHIEF OF POLICE WES
HENSLEY, in his individual and official
capacity, and CITY OF TULARE FIRE CHIEF
WILLARD EPPS, in his individual and official
capacity, and DOES 1 through 100, inclusive,

Defendants.

Case No.

**COMPLAINT FOR VIOLATION OF CIVIL
RIGHTS 42 U.S.C. § 1983**
**1. VIOLATION OF FREE SPEECH AND
DUE PROCESS;**
2. VIOLATION OF EQUAL PROTECTION;
**3. VIOLATION OF CALIFORNIA
CONSTITUTION, ARTICLE I, SECTION 2;**
**4. VIOLATION OF EQUAL PROTECTION,
CALIFORNIA CONSTITUTION ARTICLE
I, SECTION 7;**
**5. VIOLATION OF THE EQUAL
PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT 42 U.S.C. §
1983 – RACIAL DISCRIMINATION AND 42
U.S.C. § 1981;**
**6. VIOLATION OF THE EQUAL
PROTECTION CLAUSE OF THE
FOURTEENTH AMENDMENT 42 U.S.C. §
1983 – SELECTIVE ENFORCEMENT
BASED UPON RACE AND NATIONAL
ORIGIN DISCRIMINATION AND 42 U.S.C.
§ 1981; and**
**7. VIOLATION OF THE IMPAIRMENT OF
CONTRACT CLAUSE OF THE ARTICLE I
§ 10 OF THE US CONSTITUTION 42 U.S.C.
§ 1983 –AND 42 U.S.C. § 1981**

I
JURISDICTION AND VENUE

1. This is an action for damages pursuant to 42 U.S.C. § 1983 based upon the violation of Plaintiffs' civil rights under Article 1 § 10 of the United States Constitution, the First Fourth, Fifth, and Fourteenth Amendments to the United States Constitution, and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

2. Jurisdiction exists pursuant to 28 U.S.C. § 1331 and § 1343, based upon 42 U.S.C. §1983 and questions of federal constitutional law.

3. Supplemental jurisdiction over Plaintiffs' state law claims exist pursuant to 28 U.S.C. §1367.

4. Venue is proper in the Eastern District of this Court inasmuch as all the events and conduct complained of by Plaintiffs herein occurred in the Eastern District.

II
PRELIMINARY STATEMENT

5. In 2017, Plaintiffs undertook to promote and stage a three-day music festival on March 17th, 18th and 19th at the International Agri-Center in Tulare, California ("Pueblo Fest"). Pueblo Fest was slated to be one of the largest Latino/Mexican music festivals to ever be staged in the San Joaquin Valley with over fifty musical acts, including, such famous personalities as Flaco Jimenez, Los Tigres de Norte, and Los Lobos. The International Agri-Center is the largest event center in Tulare County and serves as the venue for the world-famous World Ag Expo, with an estimated annual attendance of more than 100,000 people from 50 countries from around the world, large concerts with performances by world renowned Country & Western music stars, and other large events.

6. Plaintiffs, individually, and doing business as the ROOX Agency, are professional musicians and are the owners and performers for the Mexican Ranchera music group known as Los

1 Malandrines. Plaintiffs and Los Malandrines have been recognized by the Latino music industry
2 for their musical talent, the successful release of 15 albums, and have performed before President
3 William Jefferson Clinton. In 2005, to show their appreciation for the community where they live,
4 Plaintiffs introduced a series of free- admission events to residents of the City of Tulare. In 2005,
5 the “Posada” was founded by Plaintiffs as a Christmas-themed toy giveaway/concert. The Posada
6 was active for 10 consecutive years in venues like the Tulare County Fairgrounds. In its 10-year
7 run, the Posada was attended by over 22,000 people and resulted in the gifting of more than 100,000
8 free toys to low-income children of Tulare. The event also hosted a health and resource fair,
9 educational workshops, and entertainment.

11 7. In 2015, Plaintiffs introduced to the City of Tulare the Viva Tulare Saturday Night
12 Street Fair, a weekly event held from April through October (“Viva Tulare”). Viva Tulare was
13 created to promote local downtown Tulare businesses during the weekends. Plaintiffs partnered
14 with local businesses to create a safe, family-oriented environment where the residents and visitors
15 from throughout Tulare County could enjoy live entertainment, delicious food, and express their
16 appreciation for their community, the City of Tulare, and their neighbors. At no time during the
17 Viva Tulare or the Posada, where local police or fire department personnel required to respond to
18 any public disturbance.

20 8. Pueblo Fest was intended to be Plaintiffs flagship musical event, similar to the
21 Tulare World Ag-Expo, bringing world-renowned Latino/Mexican musical artist to the Central
22 Valley of California and as the City of Tulare’s annual signature musical event, attracting thousands
23 of people to the City of Tulare, thereby promoting local businesses. During Pueblo Fest in 2017,
24 local hotels were sold-out for the entire weekend, and businesses as far as Fresno and Bakersfield
25 also benefited. Attendance was generated from 8 counties and 14 states. Gas stations, restaurants
26 and businesses experienced an immediate positive economic-impact. Local residents, community
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1 leaders, and businesses were grateful for Plaintiffs efforts in bring Pueblo Fest to the International
2 Agri-Center.

3 9. In accordance with City of Tulare's Municipal Code, Chapter 8.70 - Parades and
4 Event ("Ordinance"), Plaintiffs were required to apply for and did in fact secure a permit from the
5 City to hold the Pueblo Fest at the International Agri-Center.
6

7 10. Even though Plaintiffs and their musical promotional capabilities were well-known
8 to the City of Tulare and its officials, in the days leading up to Pueblo Fest and during the event,
9 Plaintiffs were subjected to arbitrary and capricious requirements all designed to undermine the
10 success of Pueblo Fest. Despite Plaintiffs long history of successfully promoting musical events in
11 and about the City of Tulare, such as the Posadas and Viva Tulare, City officials nonetheless
12 racially profiled Pueblo Fest as a Mexican-gang event. The City of Tulare's Chief of Police, the
13 City's Fire Chief, and the City's Planning Department imposed upon Plaintiffs undue restrictions
14 that are not placed on other similar entertainment events. Plaintiffs were required to pay cash for
15 permits. Permits were required by the Fire Department for stage equipment even though there was
16 no City ordinance or precedent for such requirements. Plaintiffs were not permitted to sell tickets
17 on-line in advance of the event and were further prohibited from selling tickets "on-site" at the
18 event. The City's then Chief of Police explicitly prohibited Plaintiffs from advertising that on-site
19 tickets would be available at the event; ignoring the fact that almost 90% of concert goers buy
20 tickets in person onsite. Plaintiffs were advised by Defendants and other City officials that the
21 event would be cancelled if tickets were sold on-site on the days of the event.
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24 11. In addition to retaining independent security officers, the Tulare Police Department
25 insisted that its officers, including the gang unit, be hired and paid-for in advance. The Tulare Fire
26 Department joined in mandating "building permits" for conditions and circumstances that do not
27 fall within City ordinances and also threatened to cancel the event if Fire Department staff were not
28

1 hired and paid for in advance.

2 12. The City of Tulare Building Department staff also joined in the discriminatory
3 conduct by exercising excessive “red-tape,” threatening to cancel the event one day prior to
4 occurring if “vendor permits” -- that were not required -- were not secured by vendors.

5 13. During the event, an excessive number of police officers were present throughout
6 the event. Police officials relocated the main-entrance to a less desirable and unplanned location,
7 threatened to shut-down the event if on-site tickets were sold, restricted parking to a non-designated
8 restricted area, mandated inefficient beer-gardens at unplanned locations, and herded attendees into
9 exits immediately after the performance by the last musical act.

10 14. As a direct and proximate cause of the unlawful discriminatory conduct by Defendants, and
11 each of them, Plaintiffs suffered economic damages by being prohibited from realizing the full
12 economic potential of the Pueblo Fest.
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15 **III**
16 **PARTIES**

17 15. Plaintiff ESAU TORRES is, and at all times relevant to this complaint was, an
18 individual residing in the City of Tulare, County of Tulare, State of California, a professional
19 musician, member of Los Malandrines, a businessman, a concert promoter, the visionary and
20 organizer of Pueblo Fest, and well-respected in the Latino/Mexican music industry.

21 16. Plaintiff EULER TORRES is, and at all times relevant to this complaint was, an
22 individual residing in the City of Tulare, County of Tulare, State of California, a professional
23 musician, member of Los Malandrines, a businessman, a concert promoter, the visionary and
24 organizer of Pueblo Fest, and A well-respected in the Latino/Mexican music industry.
25

26 17. Defendant CITY OF TULARE (“CITY”) is a municipal entity with the capacity to
27 sue and be sued. The CITY is designated as a Charter City under the laws of the State of California.
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1 The departments of the CITY include the Police Department, the Fire Department, the Planning
2 Department, and other CITY departments and agencies. Employees of the CITY have engaged in
3 the acts complained of herein pursuant to the policies, practices and customs of the CITY.

4 18. Defendant WES HENSLEY (“WENSLEY”) was at all times mentioned herein an
5 employee of the CITY, was appointed as the CITY’s Chief of Police, and was the individual who
6 directed the unlawful discriminatory conduct complained of by Plaintiffs.
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8 19. Defendant FRED YNCLAN (“YNCLAN”) was at all times mentioned herein an
9 employee of the CITY, was appointed as the the CITY’s Fire Chief, and was the individual who
10 directed the unlawful discriminatory conduct complained of by Plaintiffs.

11 20. Each of the Defendants, their employees and agents, participated personally in the
12 unlawful conduct complained of herein and, to the extent that they did not personally participate,
13 authorized, acquiesced, set in motion, or otherwise failed to take necessary steps to prevent the acts
14 that resulted in the unlawful conduct and the harm suffered by Plaintiffs. Each acted in concert
15 with each other. The challenged acts caused the violation of Plaintiffs’ rights.
16

17 21. All of the acts of the Defendants, and each of them, their officers, agents, servants,
18 and employees, as alleged herein, were done or are threatened to be done under color and pretense
19 of the statutes, ordinances, regulations, customs, official policies, official procedures, and usages
20 of the City of Tulare.
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22 22. The identities and capacities of defendants DOES 1 through 100 are presently
23 unknown to Plaintiffs, and on this basis, Plaintiffs sue these defendants by fictitious names.
24 Plaintiffs will amend the Complaint to substitute the true names and capacities of the DOE
25 defendants when ascertained. Plaintiffs are informed, believe, and thereon allege that DOES 1
26 through 100 are, and were at all times relevant herein, employees and/or agents of the Defendant
27 CITY and are responsible for the acts and omissions complained of herein. Defendants DOES 1
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1 through 100 are sued in both their official and individual capacities.

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3 **IV**
4 **CAUSES OF ACTIONS**

5 **FIRST CAUSE OF ACTION**
6 **(42 U.S.C. § 1983: VIOLATION OF FREE SPEECH AND DUE PROCESS)**

7 23. Plaintiffs hereby incorporate by reference each of the allegations set forth in the
8 preceding paragraphs as if realleged fully herein.

9 24. At all times herein mentioned, Plaintiffs, and each of them, were members of a
10 protected class by virtue of being of Mexican descent.

11 25. Clearly, Mexican music events such as the type that Plaintiffs were required to pull
12 a permit for under the CITY's Ordinance, are a protected form of speech.

13 26. At all times here mentioned, Defendants, and each of them, and the police officers
14 and CITY personnel acting under their direction and control, were acting "under color of any
15 statute, ordinance, regulation, custom, or usage, of any state" to deprive Plaintiffs of their rights,
16 privileges, and or immunities as secured by the Constitution and the laws of the United States.

17 27. The Ordinance under which Plaintiffs were required to secure a permit to hold
18 Pueblo Fest and under which the Defendants, and each of them, threatened to shut down Pueblo
19 Fest and which was cited by said Defendants as the legal basis to impose arbitrary and capricious
20 conditions upon Plaintiffs in order to promote and conduct such event, constituted an
21 unconstitutional abridgment on its face, and as applied or threatened to be applied, of the Plaintiffs'
22 affirmative rights to freedom of speech under the United States Constitution, First and Fourteenth
23 Amendments.
24

25 28. The Ordinance, on its face and as applied or threatened to be applied, is an
26 unconstitutionally overbroad restriction on expressive activity. The ordinance contains no standards
27 for use of the restrictions imposed upon Plaintiffs and is therefore unconstitutional because it allows
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1 arbitrary and capricious application of restrictions. The concert activities covered by the laws at
2 issue in this case enjoy substantial First Amendment protection. The restrictions on the
3 entertainment permit was a form of racially-based discrimination in violation of their First
4 Amendment rights to freedom of speech and expression,

5
6 29. The Ordinance, on its face and as applied or threatened to be applied, is an
7 unconstitutionally vague restriction on expressive activity. The restrictions imposed including but
8 not limited to restrictions barring both on-line and on-site ticket sales were not reasonable. The
9 restrictions did not have an independent basis not related to the content of that speech, and were
10 not narrowly tailored to serve a significant governmental interest.

11 30. These restrictions constituted an unconstitutional prior restraint on free speech.

12
13 31. There are no procedural safeguards against arbitrary censorship of free speech. Here
14 Defendants exercised unbridled discretion to deny free speech. Not only do the entertainment
15 restriction procedures lack any published guidelines or deadlines, the very fact that the Tulare
16 Police Department and the Tulare Board issue such restrictions is not clearly stated in any statute,
17 regulation, or ordinance. In place of guidelines, the defendants ask for unrestricted power to
18 interfere with free speech by selective prosecution.

19 32. The Ordinance, as applied or threatened to be applied, is a content-based and
20 viewpoint-based restriction on speech.

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22 33. The Ordinance, as applied or threatened to be applied, does not serve a significant
23 governmental interest.

24 34. The Ordinance, on its face and as applied or threatened to be applied, is neither
25 narrowly tailored nor the least restrictive means to accomplish any permissible governmental
26 purpose sought to be served by the legislation.

27 35. The Ordinance fails to adequately advise, notify, or inform persons threatened with
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possible violation of said ordinance with any due process rights of appeal. Therefore, the Ordinance is unconstitutionally vague, on its face and as applied or threatened to be applied, in violation of the due process guarantee of the Fourteenth Amendment to the United States Constitution.

36. The Ordinance as applied is an irrational and unreasonable statute, imposing unjustifiable restrictions on the exercise of protected constitutional rights. Because the Ordinance is irrational and unreasonable, its application violates the due process guarantee of the Fourteenth Amendment to the United States Constitution.

37. The Ordinance, on its face and as applied or threatened to be applied, violates the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and similar guarantees in the California State Constitution by denying plaintiff free speech rights allowed to others in similar situations and other protections of state and federal law.

**SECOND CAUSE OF ACTION
(42 U.S.C. SECTION 1983: VIOLATION OF EQUAL PROTECTION)**

38. Plaintiffs hereby incorporate by reference each of the allegations set forth in the preceding paragraphs as if realleged fully herein.

39. The Ordinance, on its face and as applied or threatened to be applied, violates the Equal Protection Clause of the Fourteenth Amendment. Defendants and police officers acting under their direction acted "under color of any statute, ordinance, regulation, custom, or usage, of any state" to deprive the plaintiffs of "rights, privileges, or immunities secured by the Constitution and the laws" of the United States. The imposition of conditions prohibiting of online and onsite ticket sale was done due to discrimination based upon racial profiling of Mexican promoters and Mexican concert goers.

40. Specifically, but not exclusively, the Ordinance as applied discriminates against individuals of Mexican descent as a class to be specifically isolated from speech, and

1 correspondingly burdens the speech of that. This discriminatory practice has a direct bearing on the
2 fundamental interest in free speech. The CITY has no compelling interest justifying the creation of
3 such class and cannot show that this classification is necessary to serve any legitimate governmental
4 interest.

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6 41. As a separate violation, the restrictions on the Mexican concert constituted different
7 treatment from Anglo concerts which were similarly situated but not burdened with the onerous
8 restrictions placed on Plaintiffs.

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10 **THIRD CAUSE OF ACTION**
(VIOLATION OF CALIFORNIA CONSTITUTION, ARTICLE I, SECTION 2)

11 42. Plaintiffs hereby incorporate by reference each of the allegations set forth in the
12 preceding paragraphs as if realleged fully herein.

13 43. The Ordinance, on its face and as applied or threatened to be applied to Plaintiffs,
14 violates Article I, Section 2 of the California Constitution.

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16 **FOURTH CAUSE OF ACTION**
(VIOLATION OF EQUAL PROTECTION, CALIFORNIA
CONSTITUTION ARTICLE I, SECTION 7)

17 44. Plaintiffs hereby incorporate by reference each of the allegations set forth in the
18 preceding paragraphs as if realleged fully herein.

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20 45. The Ordinance, on its face as applied or threatened to be applied, violates Article I,
21 section 7 of the California Constitution.

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23 **FIFTH CAUSE OF ACTION**
(VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT 42 U.S.C. § 1983 – RACIAL DISCRIMINATION AND 42 U.S.C. § 1981)

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25 46. Plaintiffs hereby incorporate by reference each of the allegations set forth in the
26 preceding paragraphs as if realleged fully herein.

1 47. All individual Defendants to this claim, at all times relevant hereto, were acting
2 under the color of state law in their capacity as employees and officials of the CITY, as the Chief
3 od Police, and as the Fire Chief and their unlawful discriminatory acts or omissions were conducted
4 within the scope of their official duties or employment.

5 48. At the time relevant hereto, Plaintiff had the clearly established a constitutional right
6 to be free from racial discrimination in law enforcement by personnel of the CITY's Police
7 Department, Fire Department and Planning Department to enjoy the equal protection of the laws.

8 49. Plaintiffs' race *and national origin* was a motivating factor in the decisions to
9 impose arbitrary and capricious conditions upon Plaintiffs with regard to Pueblo Fest and
10 preventing Plaintiffs from enjoying the full economic potential from such event.

11 50. The conduct of Defendants, and each of them, was undertaken with the purpose of
12 depriving Plaintiffs of the equal protection and benefits of the law, equal privileges and immunities
13 under the law, and due process in violation of the Fourteenth Amendment and § 1981.

14 51. Defendants, and each of them, engaged in the conduct described by this Complaint
15 willfully, maliciously, in bad faith, and in reckless disregard of Plaintiffs' federally protected rights.

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19 **SIXTH CAUSE OF ACTION**
20 **(VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH**
21 **AMENDMENT 42 U.S.C. § 1983 – SELECTIVE ENFORCEMENT BASED UPON RACE**
22 **AND NATIONAL ORIGIN DISCRIMINATION AND 42 U.S.C. § 1981)**

23 52. Plaintiffs hereby incorporate by reference each of the allegations set forth in the
24 preceding paragraphs as if realleged fully herein.

25 53. In imposing upon Plaintiffs, the arbitrary and capricious conditions as described
26 above, Defendants, and each of them, chose to selectively impose such conditions and selectively
27 enforce the CITY's Ordinance all in violation of Plaintiffs' rights under the Equal Protection Clause
28 of the Fourteenth Amendment to the United States Constitution and similar guarantees in the

1 California State Constitution.

2 54. The acts complained of herein and the conduct of Defendants, and each of them,
3 were motivated by Plaintiffs' race and national origin, thereby preventing Plaintiffs from enjoying
4 the full economic potential from such event.

5 55. The conduct of Defendants, and each of them, was undertaken with the purpose of
6 depriving Plaintiffs of the equal protection and benefits of the law, equal privileges and immunities
7 under the law, and due process in violation of the Fourteenth Amendment and § 1981.

8 56. Defendants, and each of them, engaged in the conduct described by this Complaint
9 willfully, maliciously, in bad faith, and in reckless disregard of Plaintiffs' federally protected rights.
10

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12 **SEVENTH CAUSE OF ACTION**
13 **(VIOLATION OF THE IMPAIRMENT OF CONTRACT CLAUSE OF THE ARTICLE I**
14 **§ 10 OF THE US CONSTITUTION 42 U.S.C. § 1983 –AND 42 U.S.C. § 1981)**

15 57. Plaintiffs hereby incorporate by reference each of the allegations set forth in the
16 preceding paragraphs as if realleged fully herein.

17 58. In imposing upon Plaintiffs the arbitrary and capricious restrictions as described
18 above, Defendants, and each of them, imposed changes in the law that unconstitutionally impaired
19 contracts. The unprecedented selective profiling on a Mexican event for restrictions on the Torres'
20 entertainment permit was a new interpretation of the law applied in a discriminatory practice. The
21 changes in law created a substantial impairment to existing contractual relationships with vendors,
22 staff, and performers. The impairment was substantial affecting ticket sales and vendor product
23 sales.

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WHEREFORE, Plaintiff prays for judgment as follows:

1. Actual and compensatory damages sufficient to make Plaintiffs whole;
2. Punitive damages against Defendants HENSLEY and EPPS sufficient to punish them and to deter further wrongdoing;
3. Treble damages;
4. Injunctive relief sufficient to protect Plaintiff and others from being subjected to arbitrary and capricious decisions and enforcement of the CITY's Ordinance;
5. Attorneys' fees including expert fees pursuant to 42USC section 1988, litigation expenses, costs, pre- and post-judgment interest as provided by law; and
6. Such other and further relief as the Court deems just and proper.

Dated: March 15, 2019.

LAW OFFICE OF EMILIO J. HUERTA

By: 

Emilio J. Huerta
Attorney for Plaintiffs
EASAU TORRES and
EULER TORRES

DEMAND FOR JURY TRIAL

Plaintiffs, EASAU TORRES and EULER TORRES, hereby demand a trial by jury on all issues in this action triable by a jury, including, but not limited to, issues of liability and damages.

Dated: March 15, 2019.

LAW OFFICE OF EMILIO J. HUERTA

By: 

Emilio J. Huerta
Attorney for Plaintiffs
EASAU TORRES and
EULER TORRES